

APPEAL NO. 022706
FILED NOVEMBER 21, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 24, 2002. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury; that because the claimant did not sustain a compensable injury the claimant did not have disability; and that because of the claimed injury the claimant "was unable to obtain or [sic and] retain employment" at the preinjury wage from May 23 through July 22, 2002.

The claimant appeals, basically contending that the respondent (carrier) had admitted that an incident had occurred and that the claimant suffered pain and sciatica as a result of that incident. The carrier responds, urging affirmance.

DECISION

Affirmed.

The claimant, a "merchandise" at a discount wholesale store, testified that she injured her hip, back, and leg while moving or pushing some heavy boxes of clothing on _____. It is undisputed that the claimant timely reported her injury, was sent to the company doctor (who took her off work), and that she subsequently changed treating doctors to her own doctor. The carrier, in a timely filed Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), denied an injury in the course and scope of employment, "admits that the claimant was involved in an incident at work" but that the incident did not result in damage or harm to the physical structure of the body, citing the definition of injury in section 401.011(26). The carrier also went on to state "The carrier further denies disability for any body part of [sic or] diagnosis other than the Sciatica of left leg, and numbness." (Emphasis added). The hearing officer did not mention the carrier's TWCC-21 and he commented that the claimant "was not credible," that her "testimony . . . was not persuasive, [and] the mechanics of injury, as related by the Claimant, is not plausible."

As the claimant points out, the carrier has admitted an incident occurred. At the CCH, the carrier's position, enunciated in the opening statement, was that the claimant only experienced sciatica, which is only pain and that pain alone does not constitute an injury within the meaning of Section 401.011(26). We disagree. The claimant presented uncontroverted evidence that sciatica consists of pressure on one of the nerve roots of the sciatica nerve which may result in pain, numbness, weakness, and tingling in the affected leg. One of the common causes of sciatica is a herniated disc. We hold that sciatica is more than "pain alone" and in this case constitutes an injury within the meaning of Section 401.011(26).

The hearing officer did not mention the carrier's TWCC-21 in his decision. Although the TWCC-21 does appear to assert that sciatica is not an injury, the first sentence of the TWCC-21 states that the claimant's alleged injury did not arise out of or in the course and scope of employment and the carrier denies the claimant suffered an injury. We hold that to be sufficient to raise the course and scope defense and consider the other matters raised in the TWCC-21 as arguments in the alternative.

The hearing officer is the sole judge of the weight and credibility of the evidence and the hearing officer's decision will be set aside only if the evidence supporting the hearing officer's determinations are so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.) We do not find them to be so in this case.

For the reasons stated, we conclude that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge